

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

ENTERED
February 23, 2021
Nathan Ochsner, Clerk

STATE OF TEXAS
Plaintiff,

Civil Action No. 6:21-cv-00003

The UNITED STATES OF AMERICA;
DAVID PEKOSKE, Acting Secretary of
The United States Department of Homeland
Security, in his official capacity;
UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; TROY
MILLER, Senior Official Performing the
Duties of the Commissioner of U.S. Customs
and Border Protection, in his official
capacity; U.S. CUST
OMS AND BORDER
PROTECTION; TAE JOHNSON, Acting
Director of U.S. Immigration and
Customs Enforcement, in his official
capacity; U.S IMMIGRATION AND
CUSTOMS ENFORCEMENT; TRACY
RENAUD, Senior Official Performing the
Duties of the Director of the U.S. Citizenship
And Immigration Services, in her official
capacity; and U.S. CITIZENSHIP
AND IMMIGRATION SERVICES,

Defendants,

FIEL HOUSTON and REFUGEE AND
IMMIGRANT CENTER FOR
EDUCATION AND LEGAL SERVICES,

Intervenors.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS

Plaintiff,

Case No. 6:21-cv-00003

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

AMICUS BRIEF IN SUPPORT OF THE PLAINTIFFS

In order to fathom the present problem without more confusion we need to seek answers to simple questions and look for simple answers. For the last Four Plus Years we have heard the constant bellowing coming from Washington D. C. "No one is above the Law".

On this theme we must contemplate and apply it to the situation we are now in. There is a need to ask questions and seek the answers as if we were writing our Constitution and read it in the simple language it was written in.

"We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: the judicial inquiry is complete." *Connecticut Nat. Bank v. Germain*, 503 U. S. 249, 253–254 (1992) (citations and internal quotation marks omitted).

“Presidents Cannot Ignore Laws as Written”: [*Elizabeth Price Foley is a professor of constitutional law at Florida International University College of Law*]

There is no question that the actions by Mr. Biden are facilitating the illegal alien problem, and exacerbating it. By stopping the deportation of persons who have already been convicted of crimes against our citizens. [see “8 U.S. Code § 1324 (A) (i)(ii)(iii)(iv).]”

“Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.” *Miranda v. Arizona*, 384 US 436, 491

3. *Nondelegation*. Article I, Section 1 vests *all* legislative powers in Congress, which means the President and the Supreme Court cannot assert legislative authority. See *Youngstown Sheet & Tube Co. v. Sawyer* (1952). This marks an important separation of powers between the departments of the federal government. It also has been interpreted to include a principle of nondelegation, that the people’s representatives in Congress must make the law, rather than delegate that power to the executive or judicial branch.

“The claim and exercise of a constitutional right cannot be converted into a crime.” *Miller v. US*, 230 F 486, 489. (Bills of Attainder are prohibited.)

Legal Definition of *separation of powers*

1: The Constitutional allocation of the legislative, executive, and judicial powers among the three branches of government

2: the doctrine under which the legislative, executive, and judicial branches of government **are not to infringe** upon each other's constitutionally vested powers—see also NONDELEGATION DOCTRINE. It is not rocket science with which we look at existing laws and statutes and realize that Article VI of our Constitution includes them as part of the “SUPREME LAW”. It further contains

the “Oaths” to which we all, more especially our elected officials must take and adhere to.

To sum up these facts we cannot lose sight of the “AXIOM”: “We are a Nation ruled by Laws not Men.”

In this instance we look to existing Statutes: 8 U.S. Code § 1324 - Bringing in and harboring certain aliens

“8 U.S. Code § 1324 - Bringing in and harboring certain aliens

(a) CRIMINAL PENALTIES

(1)

(A) Any person who—

(i)

knowing that a person is an alien, ***brings to or attempts to bring to the United States in any manner*** whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii)

knowing or in reckless disregard of the fact that ***an alien has come to, entered, or remains in the United States in violation of law***, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii)

knowing or in reckless disregard of the fact ***that an alien has come to, entered, or remains in the United States in violation of law***, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv)

encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)

(I)

engages in any conspiracy to commit any of the preceding acts, or

(II)

aids or abets the commission of any of the preceding acts,
shall be punished as provided in subparagraph (B).

(B) (Omitted for Brevity)

The Defendants assertion that THE “SAFE” AGREEMENT IS UNENFORCEABLE lacks creditability in light of the fact that the President has the authority to enter into these types and kind of agreements between Nations without legislative concurrence under the “Commerce Statute”.

After the last election, and days before the new Administration was inaugurated, the prior Administration signed an agreement with Texas purporting to bind the federal government to make no changes to immigration enforcement for six months unless Texas agreed to such changes. Texas asserts that injunctive relief (and only injunctive relief) is appropriate under the agreement. But the agreement is not enforceable in this Court or any other, because the doctrine of Sovereign Immunity categorically bars any such injunction. “In order to hale the federal government into a court proceeding, a plaintiff must show that there has been a valid waiver of sovereign immunity.” *Lewis v. Hunt*, 492 F.3d 565, 570 (5th Cir. 2007). “The absence of such a waiver is a jurisdictional defect.” *Id.* “A waiver of the Federal Government’s sovereign immunity must be unequivocally expressed in statutory text . . . and will not be implied.” *Id.* (emphasis added) (quoting *Lane v. Pena*, 518 U.S. 187, 192 (1996)). “[A]greement . . . between parties and their counsel is not sufficient to constitute a waiver of sovereign immunity.” *Id.* There is no waiver of sovereign immunity for equitable enforcement of a contract with the United States, so this Court cannot entertain Texas’s claims relating to the SAFE agreement. See *Robbins v. U.S. Bureau of Land Mgmt.*, 438 F.3d 1074, 1082

(10th Cir. 2006). As many circuits have held, “the Tucker and Little Tucker Acts ‘impliedly forbid’ federal courts from ordering declaratory or injunctive relief, at least in the form of specific performance, for contract claims against the government.” *Id.* (collecting cases from the First, Second, Third, Ninth, and D.C. Circuits); see also *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 704 (1949) (“There are the strongest reasons of public policy for the rule that such relief cannot be had against the sovereign. The Government as representative of the community as a whole, Case 6:21-cv-00003 Document 4-1 Filed on 01/22/21 in TXSD Page 2 of 8 2 cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right.”).

This statement by the Governments defense gives us fodder for thought!!

Is this an act by the Legislature or an act of an individual who is not vested with the authority to act?

Question? Can the President ignore the specific requirements inculcated in a statute, and override the Rights and duties of a Sovereign State, (Texas) to comply with that Statute and the requirements inculcated in it?

We are faced with a very tough Question at this moment in time and history, created by Politicians who believe they have “Kingly Powers” they are going beyond the authorities and power we “the People” have vested and delegated them with, by assuming those we have retained.

Amendment X

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

The attempts by the President and Congress to absolve any and all who are here in violation of our statutes of their crimes is in violation of the Tenth Amendment. We the People have delegated powers to the President and the Congress which are specifically enumerated and listed in our Constitution. However, no matter how hard the politicians attempt to circumvent those powers and to assign new and more expansive powers to themselves we must hold them to their oaths.

Nowhere in any of our Statutes or in our Constitution is "Amnesty" discussed or mentioned, it has been retained by the People and the States as a "Check" on the overzealous aspirations of political oligarchs'.

SUMMATION

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

See also: State of Texas v. United States of America (1:18-cv-00068)
District Court, S.D. Texas: Amicus William F. Reade, Jr.

REPRESENTED BY

William F. Reade, Jr.

William F. Reade, Jr.

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Assigned To: Andrew S. Hanen

Date Filed: May 1, 2018

Date of Last Known Filing: Feb. 17, 2021

Cause: 05:551 Administrative Procedure Act

Nature of Suit: 899 Other Statutes: Administrative Procedures Act/Review or Appeal of Agency Decision

Jury Demand: None

Jurisdiction Type: U.S. Government Defendant

"We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." -
Thomas Jefferson

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights." Sherer v. Cullen, 481 F 946. Bennett v. Boggs, 1 Baldw 60, "Statutes that violate the plain and obvious principles of common right and common reason are null and void".

Based on the forgoing and the need to respect the sovereignty of the states to protect their residents and their territorial sanctity, from any factual or assumed danger or harm, I stand by their right to refrain from

complying with the Presidents usurpation of their individual Constitutional rights. Further, based on the forgoing and "Case Law" I am humbly asking this court to find for the plaintiffs and support not only The Rights of the States but the individual Constitutional rights of the lawful citizens of this Nation to live and associate where and with whom they choose, not with and where the Federal Government forces them to.

A handwritten signature in black ink, appearing to read "William F. Reade, Jr.", written in a cursive style.

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